

JARED M. LAYMON
Claimant

COLEMAN CORPORATION
Respondent

SENTRY INSURANCE
Insurance Carrier

The issue for the Board's review is: Did the employer file or cause to be filed an employer's report of accident with the office of the director so as to allow the implementation of the statute of limitations contained in K.S.A. 44-534(b)?

FINDINGS OF FACT

Claimant injured his low back on July 27, 2009, while lifting a hydraulic cylinder. He reported the accident that day to the plant nurse, Linda Shore, who completed an employer's report of accident and submitted it to Sentry Insurance (Sentry) for filing. Claimant denied any injuries subsequent to July 27, 2009. An employer's report of accident listing Jarden as the employer was filed with the director on August 3, 2009.¹

Dr. Estivo treated claimant and released him in November 2009 with no impairment or restrictions. Claimant testified that he advised Ms. Shore, two or three months later, that his back and legs were still bothering him. Claimant testified that Ms. Shore told him that he would have to file another date of accident because he had been "reinjured,"² which he declined, because to do so would be untruthful. Claimant indicated his symptoms worsened to the point where in 2013, he saw his family physician, who referred him to Dr. Grundmeyer for treatment.

Claimant filed an application for hearing with the director on February 7, 2013.³

Catherine E. Baker Goering, director of environmental health and safety for Coleman, testified how the company processes and files accident reports:

- Q. What does Ms. Shore do with the employer's reports of accident?
- A. [Ms. Shore] completes the report of accident, she submits it to our insurance group which at the time was Sentry. And Sentry then submits that to the state.
- Q. The second page of the exhibit [Ex. 1] that you have before you, would that be the original accident report that was filled out by Ms. Shore?
- A. It does appear so.
- Q. And then the top page, would that be the accident report that was filed with the state at the direction of Coleman through Sentry its insurance carrier?
- A. That is true.⁴

¹ P.H. Trans., Cl's Ex. 1.

² *Id.* at 19.

³ The parties stipulated that claimant's application for hearing was filed more than three years after the date of accident or two years from the last payment of compensation. (*Id.* at 5).

⁴ *Id.* at 25-26.

Ms. Goering testified that any company owned by Jarden, including Coleman, will send employer's reports of accident to Sentry, which in turn files the accident reports with the state.⁵ Ms. Goering testified that while claimant was an employee of Coleman on the date of accident, "Jarden employs all of us."⁶

PRINCIPLES OF LAW

K.S.A. 44-534(b) states:

No proceeding for compensation shall be maintained under the workers compensation act unless an application for hearing is on file in the office of the director within three years of the date of the accident or within two years of the date of the last payment of compensation, whichever is later.

K.S.A. 44-557 states in part:

(a) It is hereby made the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made upon a form to be prepared by the director, within 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

. . .

(c) No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by serving upon the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

⁵ *Id.* at 29-30, 36-37.

⁶ *Id.* at 32.

ANALYSIS

The thrust of claimant's argument is that Coleman itself did not file an employer's report of accident with the office of the director of workers compensation. Claimant argues that Coleman's insurance carrier's filing of the accident report means that Coleman did not file the accident report and therefore, the time for filing an application for hearing is tolled.

K.S.A. 44-557 states that no limitation of time shall begin to run unless one of two things happen:

(1) the employer makes a report of the accident to the director within 28 days after the employer has notice or knowledge of an accident if the personal injuries which are sustained by such accident are sufficient to wholly or partially incapacitate the claimant from working for more than the remainder of the day, shift or turn on which such injuries were sustained; or

(2) the employer causes to be made a report of accident to the director within 28 days after the employer has notice or knowledge of an accident if the personal injuries which are sustained by such accident are sufficient to wholly or partially incapacitate the claimant from working for more than the remainder of the day, shift or turn on which such injuries were sustained.

While Coleman did not make the report of accident to the director, Coleman caused to be made the requisite accident report within the 28 days as required by law, by having its insurer, Sentry, file the appropriate paperwork.

Claimant's argument that the employer's report of accident is defective because it lists Jarden, and not Coleman, is of little significance. There is nothing in K.S.A. 44-557 that states that an accident report is invalid or that time limitations required under the Kansas Workers Compensation Act are tolled if the accident report lists a parent corporation, instead of the direct employer of an employee. The requirement is that an accident report must be timely filed with the director.⁷ That goal was accomplished when Coleman caused Sentry to file an accident report.

CONCLUSIONS

The undersigned Board Member affirms Judge Barnes' preliminary hearing Order dated April 3, 2013.

⁷ See *Burnside v. Cessna Aircraft Co.*, 24 Kan. App. 2d 684, 691, 951 P.2d 1315 (1998).

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁸ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2012 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

DECISION

WHEREFORE, the undersigned Board Member affirms Administrative Law Judge Nelsonna Potts Barnes' April 3, 2013 preliminary hearing Order.

IT IS SO ORDERED.

Dated this _____ day of May, 2013.

HONORABLE JOHN F. CARPINELLI
BOARD MEMBER

c: Robert R. Lee
rob@ksworkcomplaw.com
fdesk@ksworkcomplaw.com

Edward D. Heath, Jr.
heathlaw@swbell.net

Honorable Nelsonna Potts Barnes

⁸ K.S.A. 44-534a.